

October 25, 2005

TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

Thomas Perez, President
Phil Andrews
Howard Denis
Marilyn J. Praisner
Michael Subin

George Leventhal, Vice President
Michael Knapp
Nancy Floreen
Steven A. Silverman

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1 Council President Perez,
2 We have Venkataramany Balakrishna from the Sri Siva Vishnu Temple. Good Morning
3 again, it's always a pleasure to have you, sir.

4
5 Venkataramany Balakrishna,
6 Almighty God, Thou art indeed One, but show Thyself in many forms and assume many
7 names. I stand today among the leaders of our beloved Montgomery County. Bless
8 them all and grant unto them the motivation and the capacity to serve all people of this
9 County with justice and compassion. I now say a prayer in the Sanskrit language. This
10 has been chanted daily in Hindu temples for thousands of years. Its meaning is
11 universal. An English translation will follow. [speaking foreign language] The
12 Translation: We pray for the welfare and success of all who govern wisely and well.
13 Justly protecting all people. Let all good people flourish and let farms and animals also
14 flourish. Let everyone everywhere live happily. Let there be timely rains. Let the land
15 produce plenty of grains. Let this county be free from all disturbances. Let good people
16 move about fearlessly. Let families live happily with children and grandchildren. Let the
17 poor become rich. Let all live happily for 100 years. Amen. Thank you.

18
19 Council President Perez,
20 I wanted to start out by turning to Marilyn Praisner.

21
22 Councilmember Praisner,
23 Thank you, Mr. President. I just wanted to note today the passing of a great lady in the
24 Civil Rights movement this country, Rosa Parks. She moved us all from the back of the
25 bus in the very effective way and I personally, as a representative of the County
26 Council, had the opportunity to meet Rosa Parks when she visited Montgomery County
27 for the dedication of Rosa Parks Middle School in Olney. And had the honor of
28 conveying and conferring on her, Honorary Montgomery County citizenship from
29 Montgomery, Alabama, to Montgomery County, Maryland. And I can tell you that it's one
30 of the highlights of my career as a member of the County Council, to -- to meet that
31 remarkable woman and her interest in Montgomery County was -- our Montgomery
32 County -- was fascinating because I didn't have the actual documents with me when I
33 spoke at the session -- at the service program and followed up in sending them. And it
34 took a little while to get them crafted the way I wanted them. And periodically, every
35 week, someone from her office would call and find out if it was in the mail yet because
36 she was anxious to receive that -- that document and that designation. And I found that
37 very warm reflection of her personality and her interest in the broader community, even
38 at an advanced age. And she passed away, I guess this morning at the age of 92. And
39 those who will not meet her in the future, will, I hope, read about her because she was
40 certainly a remarkable woman. Thank you, Mr. President.

41
42 Council President Perez,
43 Sure, and I also wanted to note with great sorrow on behalf of the entire Council the
44 passing of John Horvat, who was a long-time County employee and both a career and a
45 volunteer firefighter, who gave his entire professional life and ultimately his life for our
46 county. The Wheaton community, he was at the Wheaton Volunteer Rescue Squad. He

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1 served on a host of Committees for the County volunteer -- County Fire and Rescue
2 Service and the State Firefighters' Association. And so from the bottom of our collective
3 hearts, we want to let his family know that our thoughts and prayers are certainly with
4 them during this very, very difficult time. So, let me turn to Councilmember Leventhal.

5
6
7
8 Councilmember Leventhal,

9 Thank you, Mr. President. I also, as we all did, worked with John Horvat on the Fire and
10 Rescue Bill and he's going to be very much missed. And, of course, commend to
11 everyone's attention the life story of Rosa Parks. There will be several days of, I think,
12 National mourning for her. And here in Montgomery County, we have, from time to time,
13 been impressed with how members of our community, not asked to do it, not prompted
14 to do it, but reach out and make an enormous difference in the lives of others. That's
15 certainly the case over the last several weeks with the Moose Lodge 658. In downtown
16 Silver Spring. Many of us wondered how best to make a difference for our distant
17 neighbors, whose lives were turned upside down and in many, many cases lost -- their
18 lives were lost, as a result of Hurricane Katrina. But what Governor Tom Kenney and
19 Moose Lodge 658 did was not just wonder how best can we help, they launched into the
20 most extraordinary time and labor-intensive effort. Ending up with more than 75,000
21 pounds of food and other necessary materials for the people who lost property and were
22 in need and, again, many people died in the aftermath of Hurricane Katrina. And I was
23 so impressed when I went by Moose Lodge 658 and assisted very briefly in packing up
24 materials and saw the intense dedication that Tom Kenney, in particular, and the other
25 brothers at Moose Lodge brought to this task that I just thought it was appropriate that
26 the County Council recognize Tom Kenney and his -- the other officers and the
27 members of the Moose Lodge 658. So, I will just read some excerpts from this
28 proclamation. Whereas on August 29th, 2005, Hurricane Katrina devastated areas
29 across the Gulf Coast. And whereas in response to this need, members of the Loyal
30 Order of Moose Lodge 658 worked to fill trucks with more than 75,000 pounds of
31 nonperishable food, personal care items, and cleaning materials for Lodges in the
32 affected areas of the State of Louisiana. And whereas the Loyal Order of Moose is an
33 organization of 1.5 million men and women in four nations dedicated to improving the
34 lives of children and elderly in need to help make our local and international
35 communities better places in which to live and raise families and to provide wholesome
36 family recreation. And whereas the actions of this lodge and others like them have
37 touched the lives and hearts of untold thousands in Louisiana and the Gulf Coast.
38 Therefore, the Montgomery County Council recognizes efforts of the Loyal Order of the
39 Moose, Lodge 658, presented today, October 25th, to Governor Tom Kenney.

40
41 [applause]

42
43 Thomas Kenney,

44 This is my Sergeant of Arms, Charlie [Seague] without whom it wouldn't have been
45 possible either.

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1 Councilmember Leventhal,
2 Great, thank you, Charlie.

3
4 Council President Perez,
5 Great. Tom, do you want to make comments?

6
7 Thomas Kenney,
8 Yes, actually we're close to 100,000 pounds now of materials. We're having a benefit
9 this Sunday, a benefit concert. If you donate at the Lodge, you get a ticket to get free
10 food at the Austin grill and see a couple of bands. We've been serving our local
11 community for 60 years from the same location, with blood drives, food drives, this -- on
12 Sunday afternoon, we're having a Halloween party for underprivileged children. If
13 anybody knows of any deserving families in their constituency, feel free to bring them
14 down or give me a call and we will give you the details on that. The need was so great
15 down there that, you know, even the 50 tons that we've sent down there is just a drop in
16 the bucket. What made me the proudest, really, is to provide an outlet to our
17 community, to the Silver Spring, Montgomery County community. People had already
18 written the check but weren't able to get the personal connection with the victims down
19 there. It was really a -- an outlet for them to -- really a healing part of -- for our
20 community. And just to be able to be a conduit for that really was what gave me the
21 most hope, seeing that outflow, the outpouring from our community. So, really it's the --
22 all of Montgomery County really deserves this for helping us get that done.

23
24 Councilmember Leventhal,
25 Great. Thank you so much.

26
27 Thomas Kenney,
28 Thanks, George.

29
30 Councilmember Leventhal,
31 Appreciate it, great to meet you. Thanks for your great work.

32
33 Council President Perez,
34 Agenda and calendar changes? Ms. Lauer?

35
36 Linda Lauer,
37 The consent calendar agenda item "A" we've added an additional housing and
38 community initiatives incorporated to the resolution to support applications for the
39 State's Community Investment Tax Credit Program. We've added introduction
40 suspension of rules and action on a resolution to support application for State's
41 community legacy funding. That's the Washington Area Housing Trust Fund. And the
42 agenda is being changed a little bit, immediately following the consent calendar we're
43 moving up the discussion on the FY07 property tax issues. In addition, next Tuesday at
44 12:30, we've added a discussion of state legislation so that's on your agenda for next
45 Tuesday. And then one last item at -- when the session is over this afternoon, we will

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1 conduct the interview that we had to postpone this morning for the Director, Department
2 of Public Libraries. Thank you.

3
4 Council President Perez,
5 Okay. Let's see, madame -- let's see, did you mention the public hearing? You did?

6
7 Linda Lauer,
8 No, I didn't.

9
10 Council President Perez,
11 Oh, okay.

12
13 Linda Lauer,
14 Yes, this is the day we wanted to announce the public hearing on on November 29th at
15 7:30 to receive comments and suggestions on the County's planning process.

16
17 Council President Perez,
18 Great. Thank you. Madame Clerk, approval of minutes?

19
20 Clerk
21 The minutes of October 11th are up for approval.

22
23 Councilmember Floreen,
24 Seconded.

25
26 Council President Perez,
27 Moved and seconded. All those in favor? Unanimous. No petitions, let's move to
28 consent calendar.

29
30 Councilmember Floreen,
31 Move for approval.

32
33 Council President Perez,
34 Moved and seconded. Ms. Praisner?

35
36 Councilmember Praisner,
37 I know we're doing a couple of application support for the community investment tax
38 credit program. The only request I would have for the department is can we in the future
39 get them ahead of time so they can be introduced on one week and we don't have to
40 suspend the rules? There may be, in these cases, comments that individuals might
41 have about the individual applicants that the community might have and we don't have
42 the benefit of that opportunity when we're forced against this deadline. And I thank
43 Linda [McMillan] for her in-depth review, the most recent one submitted to us.

44
45 Council President Perez,

1 Okay. No other questions? All those in favor? Unanimous. Let's move to -- we're going
2 to move up to item 7.1, discussion of the FY07 property tax issue. Steve Farber. There
3 is an item in the packet, and Steve, I was going to ask you to take us through the
4 consideration. And I want to, again, start out by thanking my friend, Marvin Weinman,
5 who spent a lot of time in the dog days of August with his colleagues, collecting
6 signatures regarding the Homestead Property Tax. We've had a number of interactions
7 regarding this and we wanted to have this discussion this morning. So, Mr. Farber, can
8 you walk us through your packet?

9
10 Steve Farber,

11 Yes, Mr. President. As the packet notes, the property tax is a very important source of
12 County revenue. It provides about a third of our total County revenue. Property tax, of
13 course, is also important to taxpayers and this issue was front and center last Spring
14 when the Council addressed the '06 budget. The Council, as you recall, ultimately
15 decided to adhere to the charter limit on property tax revenue, which basically limits the
16 increase in revenue to the consumer price index, plus, of course, the effect of new
17 construction and this is on real property as opposed to personal property. And what that
18 meant last Spring is that the Council reduced property tax revenue compared to current
19 rates by more than \$85 million. And you did so in three ways: You made a \$0.04
20 reduction in the rate and that affected, of course, residential, commercial, and personal
21 property. But then you did two forms of targeted relief. You made a \$116 flat credit as
22 an offset against the income tax. That -- that was a revenue loss of \$29 million, a
23 savings to taxpayers. The \$0.04 reduction was a savings to taxpayers of \$50 million and
24 then you sharply expanded the circuit breaker, the Homeowners Property Tax Credit
25 Program and that saved taxpayers an estimated \$6 million. We don't have the final tally
26 on that because the deadline, as you know, was extended to October 31 for folks to
27 apply for that. But these latter two forms of property tax relief were far more targeted, far
28 more aggressive, and the total package of property tax relief, as I said, was more than
29 \$85 million. This is a little early right now for us to be talking about fiscal year '07
30 property tax issues and that's because it's really five or six weeks from now that our first
31 consideration of that begins. That will come when the MFP Committee and then the full
32 Council take up the Fall spending affordability guidelines starting in late November and
33 then into early December. And at that point, there will be data from the finance
34 department that we're expecting in several weeks. Updating all revenues, including
35 property tax revenue. And the Council will be able, as part of the Fall Spending
36 Affordability Guideline process, to determine the level at which at least at this early
37 stage it wishes to set the property tax limit. In the Spring, in April there will be a second
38 round of Spending Affordability Guidelines. Then, of course, you will not make your final
39 decision on FY07 property tax issues until late May. So, we're really quite a long time
40 away from that. There is an issue that has risen, as you mentioned, Mr. President,
41 regarding the Homestead Property Tax Credit. This is the assessment cap increase and
42 state law limits the annual increase in taxable value for owner-occupied homes to 10%
43 or less. Each county is required to set its cap at that level or below and to advise the
44 state by November 15th each year if it intends to make a change for the following year.
45 Mrs. Praisner this morning at the state legislative session mentioned that -- or requested
46 that we contact the State Departments of Assessment and Taxation to learn whether

1 that November 15th deadline can be pushed back or not. But it is an early deadline by
2 which counties have to notify the state whether they want to make a change.
3 Montgomery County's cap has been 10% for many years. The Taxpayers League, as
4 you noted, has submitted a petition that would change the cap from 10% to 5% for tax
5 levy year 2006 or fiscal year 2007. Those are pro terminus. And in the packet, I included
6 a memo from League President Marvin Weinman that clearly describes the rationale for
7 this proposal. As you noted, Mr. President, the league has put a lot of energy into this
8 and clearly the arguments that Mr. Weinman has made warrant careful consideration. In
9 my view, there are several arguments that are worth considering on the other side. I
10 think the most important argument is that this is very early for the Council to be making
11 binding decisions regarding a fiscal year that doesn't start for more than seven months
12 from now. An awful lot can change between now and then. You will not be setting
13 property tax rates for fiscal year '07 until the end of May, next year. An awful lot can
14 change in that period. I think it's important for the Council to have flexibility to make the
15 decisions that at that point in time are indicated. I think a second point is if you lower the
16 assessment cap, what you're really doing is making the same percentage reduction in
17 the tax bills of owner-occupied homes. Now, it may be that next Spring you will decide
18 to do that. That certainly was part of your package last Spring. But the fact is that you
19 also took some very progressive steps that I think are very much to the Council's credit.
20 You expanded the circuit breaker, as I mentioned, and you provided the flat credit,
21 which is worth a lot more to lower income homeowners than it is to higher income
22 homeowners. I think it's important for you to preserve your options in this respect, rather
23 than to make prematurely a decision that would consume revenues that you might
24 prefer to target elsewhere next Spring. Finally, it seems to me that the Council's bona
25 fides on this issue of property tax relief are very clear. You adhered to the limit last year.
26 It was a difficult decision, but one of the many priorities in your FY06 budget. It's
27 interesting to note that adhering to the charter limit last year actually provided taxpayers
28 with more relief than if you had had a 5% assessment cap. It seems to me very likely at
29 this point in time that the Council is going to provide property tax relief in fiscal year '07.
30 The issue to me, at least as I look at the data right now is not whether you will do so, but
31 to what extent you will do so, and in what form you will do so. And it seems to me that
32 given that fact and given the importance of the Council's being able to address not only
33 tax relief as a priority but also the other priorities that four weeks ago in your decisions
34 on Budget Priorities, row 7, you set forth priorities in education, affordable housing,
35 public safety, health and human services, and other areas. It's important for the Council
36 to retain flexibility at this point and to reserve judgment on your final decisions until the
37 end of the budget process next May.

38
39 Council President Perez,

40 Again, just so I understand it, a -- a assessment cap of 10% doesn't mean you're at the
41 10% level.

42
43 Steve Farber,
44 No.

45
46 Council President Perez,

1 And if I understand last year, by going to the charter limit we were effectively at a level
2 of, if I understood it, somewhere in the 4% range.

3
4 Steve Farber,
5 Yes, 3 or 4% range, yes.

6
7 Council President Perez,
8 Okay.

9
10 Steve Farber,
11 That is correct.

12
13 Council President Perez,
14 Ms. Praisner?

15
16 Councilmember Praisner,
17 Yes, thank you very much. Thank you, Steve, for this document and for providing us an
18 opportunity to talk through the issue and I want to thank Mr. Weinman for continuing to
19 raise these issues. He's been a -- actively engaged in this issue and I think it's helpful
20 for us all. Somewhat similar to the constant yield requirement for advertising and
21 process, when the state engages in requirements or has specific dates for departments
22 to operate, I think it does not necessarily reflect what is the capacity to make
23 modifications in this day and age from a technology perspective and given the
24 magnitude of the ways in which individual counties may operate. With our -- so, these
25 dates and these requirements of cycle are pretty old as far as they've been in place for
26 a long time. This morning I asked of our Office of Intergovernmental Relations to have a
27 discussion with the Assessment Office at the State Tax and Assessment Office, or
28 whoever is involved in the requirements for the fact that we have to notify the state by
29 November 15th for an action we will take seven months from now from a context of
30 setting the property tax rate for the County. It seems to me that kind of date or lapse in
31 time is for a period when we didn't have the capacity with technology to be able to move
32 more quickly. Or when maybe we had to put the information on a horse and send the
33 rider to Annapolis to tell them what our -- what our intent was. Given this day and age
34 and given capacity and technology, it would seem to me that that date -- deadline
35 should be closer to the actual action. Plus, these requirements are set in place by the
36 state as far as deadlines without taking into consideration a variety of ways in which a
37 county may approach this issue. Certainly in Montgomery County, given the voters'
38 interest and intent on spending affordability and the charter limit issues that we have
39 here I think it's clear that no council since those actions of creating a spending
40 affordability process and the charter limit associated with property tax revenue. So, it's
41 clear that no council has ignored the voters from a standpoint of paying attention to the
42 intent or the outlying interest associated with the charter limits, but to do so now or to
43 make some modification now without the full breadth of information and the options
44 available, it wasn't until I discovered the option of the flat credit several years ago that
45 the Council first used the credit. And, as you said, it's much more progressive than an
46 across-the-board percentage increase or amount because it affects those -- it has a

1 different effect depending upon value of home and therefore, likely, home income and
2 capacity to pay, and also with our circuit breaker options, we've expanded that capacity,
3 as well, to respond to individuals rather than across the board. So, I'm comfortable with
4 what we've suggested, which is at this point to not take any action and, instead, to wait
5 until we can do so comprehensively with the budget. And what that percentage might be
6 or how that percentage might be affected, as you said, we have more options -- more
7 quivers in our -- for our arrows as far as attacking this issue, without having to rely on
8 this exclusively as an option. So, I want to thank you, Mr. Farber for presenting the
9 information. Thank the Council President for scheduling an opportunity for us to better
10 understand and I think the public to understand the hesitancy, at least on the part of this
11 Councilmember, for taking an action now that would modify something now without the
12 full knowledge of information we'd need next June.

13
14 Council President Perez,
15 Mr. Andrews.

16
17 Councilmember Andrews,
18 Thank you, and thank you, Mr. Farber, for a very cogent presentation. I agree that it's
19 premature to make decisions that would tie the Council's hands regarding the FY07
20 budget. The point I wanted to make is one that looks at our revenue base and how it's
21 changed over the years because your chart on Circle 1, I think, is -- is very instructive
22 about the 10-year history of where we get our revenues. We get about 60% of our
23 revenues from a combination of the property and the income tax, but there's been a
24 conscious decision in the past nine years to reduce the reliance on the property tax
25 because it's more regressive than the income tax, not being based on income. And to
26 maintain or to increase somewhat the reliance on the income tax, which is more
27 progressive. So, if you look at the chart on Circle 1, you will see that the reliance on the
28 property tax in FY97 was 37.6% of the County revenues and in FY06, approved budget,
29 it was 31.6. So, a decline of about 20% in terms of the reliance on that, going from 37%
30 to 31%. The income taxes remain fairly steady in terms of the percent of the budget that
31 we -- we use -- that we fund through the income tax revenues. Roughly around 27,
32 28%. So, I think it's been a good move for the Council to reduce the reliance of the
33 budget on the property tax, because it is more regressive than the other taxes that we
34 have in our base. And I would note that the Council has cut the property tax rate three
35 times in the last seven years. So we have been moving steadily in that direction.

36
37 Steve Farber,
38 To buttress your point, Mr. Andrews, as Mr. Subin pointed out last Spring, before the
39 Charter Amendment in 1990, that percentage of the property tax as a total -- percentage
40 of total revenue was well above 40%.

41
42 Councilmember Subin,
43 I know enough not to speak, Mr. President.

44
45 [laughter]
46

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1 Steve Farber,

2 And Mr. Subin noted that in the late '80s that was a source of real concern. That was
3 addressed in the Charter Amendment of 1990 and so we're down even further,
4 compared to where we were.

5

6 Council President Perez,

7 Mr. Subin, what about the early '70s when you first got on the Council, what -- I forgot,
8 what was the rate then?

9

10 Councilmember Leventhal,

11 What about the '50s?

12

13 Councilmember Subin,

14 I tried to think back but my mind wouldn't go that far!

15

16 Council President Perez,

17 Okay, very well.

18

19 Unidentified

20 [INAUDIBLE] New Jersey [INAUDIBLE]

21

22

23 [laughter]

24

25 Councilmember Subin,

26 No, actually I was on the seven seas!

27

28 Council President Perez,

29 Okay. Mr. Weinman, I -- you've spent a lot of time on this issue and I think you've heard
30 what I think is the consensus of the Council. If you had -- I don't know if you had a
31 couple of comments you wanted to make in response. When you sit out there for as
32 many hours as you sat out there for, Marvin, I did want to give you a little opportunity
33 here, for a couple of minutes. We always value your input!

34

35 Marvin Weinman,

36 You know, I -- I don't necessarily disagree, that it's not too early to do something
37 legislatively, but it's certainly not too early to educate the public. And that's what we're
38 trying to do. We went out, we went out to the County Fair and it's amazing who you talk
39 to and how little they know about County government and they don't even come to the
40 Council and what we try to do is to reach out, to make those people interested in their
41 government and to take part in it. And we're very successful, I believe getting 1,800
42 people -- I guess probably about 90% of them really were not understanding how the
43 government operates and about their taxes. So, I feel good that we made an effort and I
44 feel that, you know, we should continue that effort and how you continue that effort is
45 you hold a public hearing and you allow some of those people to come in perhaps for
46 the first time and to voice their own opinion. Not mine, not anybody else's. There are a

1 lot of people who say taxes are fine, you know, "I think everything is just fine." But if, in
2 fact, you allow the 10% to default by not passing the bill, you've cut off the opportunity
3 for the people to be heard and we recognize that the 5% was an issue so that we could
4 engage the public and we would hope that you continue to engage the public by putting
5 in a bill for 10%, which would give you exactly what you want, but would also give the
6 public that opportunity to be heard. And I think we -- you know, that's not unreasonable.
7 I gave you two charts and I don't want to talk to them -- I mean your time is valuable, but
8 it's for your information, but hopefully -- I would hope they would be included in the
9 information for the 27th and perhaps at Committee we'd be allowed to talk to those in
10 detail by coming to the table. And I thank you for all of your consideration.

11
12
13
14 Council President Perez,
15 And you are a member of the public and this is part of the public dialogue and I
16 recognize it's different than what you may have had in mind. But part of my thinking in
17 putting this together today, Marvin, is that we wanted to have –

18
19 Marvin Weinman,
20 This may be the best deal in town, Tom, and I appreciate it!

21
22 Council President Perez,
23 Okay, good.

24
25 Marvin Weinman,
26 But there are other people out there...

27
28 Council President Perez,
29 This must be a good town if this is the best deal, huh, Marvin?

30
31 [laughter]

32
33 Council President Perez,
34 Okay. Okay. Well, thank you and I know that you've had a time constraint so I hope we
35 were able to –

36
37 Marvin Weinman,
38 Very much so, I appreciate it.

39
40 Council President Perez,
41 Thank you. Thank you, Mr. Farber. That was a very good presentation and I'm -- I
42 appreciate all of your hard work on that. Moving back to Legislative Session, Day 32.
43 Madame Clerk, journal for approval.

44
45 Clerk
46 The journal of October 11th for approval?

1
2 Councilmember Praisner,
3 Move Approval.

4
5 Council President Perez,
6 Moved and seconded, all of those in favor? Unanimous. Bills for introduction. There are
7 none. Call of bills for final reading, personal property tax -- Personal Property Business
8 Tax Credit, Employee Home Computer Telecommuting Incentive. Councilmember
9 Praisner?

10
11 Councilmember Praisner,
12 Yes, thank you. This legislation was sponsored by Councilman Denis and myself. It
13 implements enabling legislation that was passed in Annapolis several years ago under
14 the leadership of then Senator Chris Van Hollen and Delegate Sheila Hickson, both
15 from Montgomery County. And is consistent with also some of the support that we
16 received from the Chamber of Commerce. The bill is intended to incentivize
17 telecommuting initiatives by providing a tax credit on personal property for businesses
18 that purchase home computers for employees to use for telecommuting purposes. The
19 tax credit applies, as I said, to the employer's personal property tax liability. It's capped
20 at \$2,000 annually for employee, and the Committee is also recommending that the
21 amount of the credits provided by the County for the calendar years 2006, 2008, also be
22 limited and that the Council in the future, beyond 2008, provide by resolution for the
23 amount of revenue that would be available. As I said, the legislation stems from
24 enabling legislation passed in Annapolis several years ago. As everyone knows and
25 even with the efforts for traffic congestion, telecommuting has been identified as at least
26 contributing significantly, especially in the last few years, to efforts to try to reduce
27 congestion on our roads. The Council of Governments, The International Telework
28 Association, lots of organizations are involved and engaged in trying to increase those
29 who would consider telework as a possibility for at least part of the workday -- or
30 workweek, I should say, within -- for businesses. We've also, in the MFP Committee,
31 talked with and expanded and encouraged our government to look at the variety of
32 positions that might benefit and our employees who might benefit from having the
33 opportunity to telework. The Committee considered the following issues in making our
34 recommendations. During the public hearing we had a suggestion from the Taxpayers
35 League that the Committee specify within legislation the configuration of the computers
36 in order to make them equivalent to the County computer configurations. As you know,
37 even we in the County have different types of computers, depending upon their use and
38 needs and the Committee, although we considered the recommendation, did not
39 support restricting any business to equivalent county configurations and believe that
40 since the cap is based on 50% of the cost of this system, we've -- we've accommodated
41 what might be more likely the County's cost for a standard desktop computer, although
42 we have different varieties and that to -- for us to engage in it trying to define how a
43 business -- what a business's needs would be for a computer would probably not be a
44 good idea. As I said, the -- we had some information about the potential exposure under
45 this issue. We have no actual experience, though. We did amend the bill to cap the total
46 amount of tax credits issued each year and the Committee voted to institute tax caps for

1 the first three years, as I indicated, based on amounts of \$100,000 in 2006, \$175,000 in
2 2007, \$250,000 in 2008. And that would allow approximately 50 employers to take
3 advantage of the tax credit this coming year, 88 the following year, and 125 the
4 subsequent year. The Committee was anxious to look at how much time should be
5 associated with telecommuting. The Taxpayers League had reviewed a standard of
6 about 1.5 days a week, or 78 days annually to qualify. There are state programs that
7 are different and are far fewer, but the Committee recommended amending the bill to
8 provide that a employer must confirm that an employee works at home at least 78 days
9 per calendar year or an additional amount of time, which we might modify in a
10 subsequent Method 2 regulation, as we get more experience with that. The Committee
11 also recommends amendments that relate to the credits being applied for once a year in
12 that the credit is applicable. The application would be submitted within 12 months of
13 purchase. That new language is on page 4 of your packet and the Committee also
14 decided not to apply the credit for programs where computers already exist so we're
15 talking not about upgrading. We voted initially to limit the credit for new computers and
16 new programs. The new computers would need to be purchased after December 31st of
17 this year. The Taxpayers League also raised the point of what happens if an employee
18 stops telecommuting or leaves the company. The Committee considered requiring
19 companies to notify the Department, but decided at this point not to put that requirement
20 in the legislation. We could look at that issue through regulations which would be --
21 which would have to be developed subsequently. So, we limited the tax credit to new
22 computer purchases used to establish new workstations for telecommuting. The title
23 has also been changed on the legislation to better focus on the fact that it is Home
24 Computer Telecommuting Incentives related to Personal Property Business Tax Credit
25 and there was also legislation to, again, clarify that application and that it doesn't apply
26 to operating personal property of a public utility. With that, the Committee recommends
27 3.0 enactment of the legislation. I wanted to thank Mr. Denis for bringing this forward
28 and also, thank again, Senator Van Hollen and Delegate Hickson for taking the lead on
29 this idea when it was brought to them in the first place.

30
31 Council President Perez,
32 Mr. Denis?

33
34 Councilmember Denis,
35 Thank you, Mr. President. First, I want to thank you personally for wearing a different tie
36 today.

37
38 [laughter]

39
40 Councilmember Denis,
41 Appreciate that very much! No, but -- this bill is a...

42
43 [laughter]

44
45 Councilmember Denis,

1 This bill is about commuters and computers and I'd like to thank my Committee Chair,
2 Mss. Praisner, for her excellent explanation, and for her support, which predates by
3 several years, my own involvement in the issue. I think we came at this from different
4 directions and without exactly knowing that the other person was working on it. And as
5 Ms. Praisner said, likewise in the General Assembly, the original enabling legislation
6 was cross-filed. That is there was a Senate Bill and a House Bill. This was in '02. The
7 Senate Bill was sponsored by Senator Van Hollen -- then Senator Van Hollen -- the
8 House Bill by Delegate Sheila Hickson. Both bills passed and under procedures, the
9 governor signs one of two bills. When I was down there, I never -- I argued against that.
10 I always said you could sign both bills and nothing bad would happen. But for whatever
11 reason, the custom is to sign one of the two bills and how that is selected is always an
12 interesting mystery to me, but for whatever reason the Governor signed the Senate bill,
13 Senator Van Hollen's bill and that enables us to pass this legislation. The bill will help
14 encourage employers to allow workers to telecommute by helping to offset the cost of
15 computer equipment to be used by those employees. The bill, I believe, is especially
16 important in an era of crisis management. The bill is fiscally responsible. There are
17 limits to the tax credits offered by this bill for each business, limited to \$2,000 per year.
18 There is also an overall limit to the amount of tax credits that can be issued. \$100,000 in
19 the first fiscal year. This bill is a modest effort to encourage small businesses to choose
20 telecommuting for their employees. Telecommuting permits workers to be productive
21 away from a traditional workplace, a small step away from traffic congestion. The
22 telework movement has actually been around for the last 25 years and has even
23 become an option for some federal employees. It needs encouragement because it's
24 counter intuitive to many middle managers and many people who are -- whose
25 generation I belong to and who find it difficult to keep track sometimes of all the
26 changes in the modern -- the modern world. Overall, some 19 million people telework
27 nationwide. That number is not only enormous, it is growing. What's happened and in
28 fact is happening is that advances in information and computer technology have made
29 the world flat, in Tom Friedman's famous phrase and excellent book. The development
30 of the internet has given some the ability to work anytime from almost any place. The
31 last time I had a computer problem, I had a lovely conversation with someone in New
32 Delhi. Telecommuting has gained popularity since it promotes a productive workforce
33 and increases employee morale, often resulting in higher rates of worker retention.
34 Office distractions are reduced, hence more work time. Telecommuting also helps the
35 environment by eliminating vehicle trips from the road during peak hours. A reduction of
36 just 1% of cars on the road results in a 3% reduction in congestion. We in the
37 Washington area still live in a major nonattainment area for air pollution under the Clean
38 Air act. Telecommuting will help us get out from under that cloud. Telework programs
39 also offer parents a choice of providing care and supervision for their own children
40 without the concern of being unable to advance in their own careers. It also
41 accommodates employees with health problems or elder care responsibilities. I'd like to
42 reiterate my thanks for Ms. Praisner for co-sponsoring this bill and for her leadership
43 and as Chair of the Committee. Mr. Andrews, fellow member of the Committee, for his
44 significant input at the Committee level. And also Sonya Healy for her help in drafting
45 the bill and guiding the Committee discussion. I'd also like to thank the Chambers of
46 Commerce for their positive testimony in support of this measure. A letter from the BCC

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1 chamber -- Bethesda-Chevy Chase Chamber-- is in Council offices today, emphasizing
2 the positive impact that this bill will have on small businesses. Thank you, Mr. President.

3
4 Council President Perez,
5 Madame clerk?

6
7 Clerk,
8 Mr. Denis?

9
10 Councilmember Denis,
11 Yes.

12
13 Clerk,
14 Ms. Floreen?

15
16 Councilmember Floreen,
17 Yes.

18
19 Clerk,
20 Mr. Subin?

21
22 Councilmember Subin,
23 Yes.

24
25 Clerk,
26 Mr. Silverman?

27
28 Councilmember Silverman,
29 Yes.

30
31 Clerk,
32 Mr. Knapp?

33
34 Councilmember Knapp,
35 Yes.

36
37 Clerk,
38 Mr. Andrews?

39
40 Councilmember Andrews,
41 Yes.

42
43 Clerk,
44 Ms. Praisner?

45
46 Councilmember Praisner,

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1 Yes.

2
3 Clerk,
4 Mr. Leventhal?

5
6 Councilmember Leventhal,
7 Yes.

8
9 Clerk,
10 Mr. Perez?

11
12 Council President Perez,
13 Yes, bill passes 9-0. Let's turn to District Council Session, Agenda item 7, Request For
14 Oral Arguments and/or Consideration of Hearing Examiner's Report, G-834 Porten
15 Companies. We have a recommendation from Planning Staff and Planning Board for
16 approval. Recommendation from the Hearing Examiner for denial. Mr. Leventhal?

17
18 Councilmember Leventhal,
19 Mr. President, I move that we grant oral argument on this request.

20
21 Council President Perez,
22 Okay. Ms. Floreen was the next light.

23
24 Councilmember Floreen,
25 Thank you, Mr. President. Well, I read the request for oral argument. I'm not sure that
26 there's anything in the oral argument that would make me change my point of view on
27 this because I'm convinced by the recommendations of the Hearing Examiner. So, I
28 would move approval of the Hearing Examiner's recommendation of denial, based on
29 the facts of record.

30
31 Councilmember Leventhal,
32 Okay, so Ms. Floreen's would be a substitute for my motion. My motion was made and
33 seconded. It was, the Council President seconded it. But it's in order, I guess, for Ms.
34 Floreen to offer her motion as a substitute to mine.

35
36 Council President Perez,
37 Sure. Okay. Let me turn to Ms. Praisner?

38
39 Councilmember Praisner,
40 Yes, I -- I actually put my light on when Mr. Leventhal made his request for oral
41 argument because, I was anxious for us to then define what would be the scope of the
42 oral argument because I agree very much and seconded Ms. Floreen's motion that I'm
43 not sure that oral argument would help in this issue, since the packet is already done
44 and is fairly clear. The only thing that I had a question about is that we not only received
45 your request for oral argument, we also received a request to remand to the Hearing

1 Examiner and I am, you know, if the request -- motion for denial does not pass, I think a
2 remend is more appropriate than an oral argument in this case. So, that's the only --

3
4 Council President Perez,
5 That would be to -- as you look on Circle 1, to revise the binding elements?

6
7 Councilmember Praisner,
8 Yes, I guess I'm not sure -- and the reason why I'm going to support denial is I'm not
9 sure that remanding, in this case, to open it and modify some of those elements, binding
10 elements, would change the view of -- of the opponents in the issues that they've raised
11 or change the view of the Hearing Examiner because of the breadth of the rationale that
12 the Hearing Examiner raised for denial. But it seems to me it's -- oral argument is not
13 where I would be on the issue.

14
15 Councilmember Subin,
16 Mr. President, point of order --

17
18 Council President Perez,
19 Mr. Subin was next, you were next, Mr. Subin.

20
21 Councilmember Subin,
22 You know, I'm not one to be a strict adherent to procedure, but rather than risk this
23 coming back to us on a point of order, or there being an appeal across the street, Mr.
24 Leventhal's motion was to deny oral argument...

25
26 Councilmember Leventhal,
27 No, it was to allow oral argument.

28
29 Councilmember Subin,
30 Or to allow oral argument. It dealt with the oral argument.

31
32 Council President Perez,
33 Correct.

34
35 Councilmember Subin,
36 And Ms. Floreen and I had the same problem. We didn't hear the second, in which case
37 her motion would have been procedurally okay. But it -- it was not a substitute, I don't
38 think. We really should have voted on the oral argument issue first and then dealt with
39 that. And that's just to try to avoid this coming back or being appealed.

40
41 Council President Perez,
42 Okay, okay, Mr. Leventhal.

43
44 Councilmember Leventhal,
45 No, you're -- that's a point well taken. I got to be honest, I understand that there is
46 disagreement here between the planning board's recommendation and the Hearing

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1 Examiner's recommendation. I've read the written material, obviously the applicants
2 have a different view from the written material and -- and in general. Most of the time
3 we've made oral argument available, based on the comments of my colleagues, I don't
4 know that there's any purpose having a vote on oral argument and I -- if there does not
5 appear to be that sentiment -- I guess I'd just like to expedite this matter so...

6
7 Multiple Speakers
8 [INAUDIBLE]
9

10 Council President Perez,
11 Let's bring it to a vote.
12

13 Councilmember Leventhal,
14 Let's vote it. Fine.
15

16 Councilmember Subin,
17 Either way...
18

19 Multiple Speakers
20 [INAUDIBLE]
21

22 Council President Perez,
23 But you had a question? You had a question on that motion?
24

25 Councilmember Leventhal,
26 Right --
27

28 Councilmember Silverman,
29 No, I just wanted to support it. I mean we have a split -- we have a split decision here
30 between the Planning Board and the Hearing Examiner. For my time that I've been
31 here, I've tried to be as open as possible to both applicants and citizens who have
32 requested oral argument, particularly in cases where there are split recommendations
33 and whether somebody -- I mean I've read it as well and I've got questions and I think
34 oral argument from both sides would be appropriate. So, I'm -- that's where I am to at
35 least hear the arguments.
36

37 Council President Perez,
38 Okay. We know the issue. Motion for oral argument has been made and seconded. All
39 of those in favor? Mr. Knapp, Mr. Leventhal, myself, Mr. Silverman, Mr. Denis.
40 Opposed? Ms. Floreen, Mr. Subin, Mr. Andrews, Ms. Praisner. All right, we will set oral
41 argument for -- we will say half an hour.
42

43 Councilmember Praisner,
44 Mr. Perez, I think we need to define what the issues are for our oral argument.
45

46 Council President Perez,

1 Yep. Okay. A fair point. Mr. Silverman?

2

3 Councilmember Silverman,

4 There are four -- there are four grounds that the applicants -- so I think we could restrict
5 it to that. I mean, they can decide how much of their half an hour they want to use for --
6 or half an hour total, is that what you were saying, Mr. Perez? So that would be 15/15?

7

8 Council President Perez,

9 Yes.

10

11 Councilmember Silverman,

12 They can decide how much time they want to spend on each of the four issues, but
13 they've raised the four issues that are contained on Circles 2, 3, 4, and 5. I would
14 suggest that be the scope of the oral argument issues.

15

16 Councilmember Leventhal,

17 Yes, that's certainly fine with me.

18

19 Council President Perez,

20 Okay, we have a lot of stuff in the hopper to be scheduled, so, I don't know when it will
21 be -- but no, let me revamp that. We have a lot of stuff in the hopper already scheduled
22 and so I don't want to make any promises as to when this will be scheduled other than
23 to say that it obviously will be. We have spoken and the fact that we've scheduled oral
24 arguments shouldn't be interpreted one way or another as to what the conclusion will
25 be. Anybody who has observed us in the past understands that you can't draw any
26 conclusions from that. That's where we stand on that. I believe that is all we have this
27 morning. We will reconvene at 1:30 for a public hearing on the Master Plan For Historic
28 Preservation.

1 Councilmember Leventhal,
2 Good afternoon. This is a public hearing on the Master Plan for the Historic
3 Preservation Amendment which would add Moreland at 7810 Moorland Lane in
4 Bethesda and the Sycamore Store at 7025 MacArthur Boulevard to the Master Plan. A
5 Planning Housing and Economic Development Committee work session is tentatively
6 scheduled for November 14th, 2005. Persons who wish to submit additional information
7 for the Council's consideration should do so by close of business Friday, November 4th.
8 Before beginning your presentation, please state your name clearly for the record. Our
9 first speaker is Claire Kelly from the Planning Board.

10
11 Claire Kelly,
12 Good afternoon. For the record, I'm Claire Kelly, Historic Preservation Planner and staff
13 to the Montgomery County Planning Board. I'm here today to present the Planning
14 Board's recommendation on the final draft amendment to the Master Plan for Historic
15 Preservation for Moreland and the Sycamore Store. The Planning Board held a public
16 hearing and a work session in February of this year to evaluation these resources. The
17 Board unanimously agreed with the Historic Preservation Commission in recommending
18 the designation of both of these resources and agreed with the criteria and the rationale
19 cited by the Commission. It was a pleasure for the Planning Board to receive these
20 nominations for these resources from private citizens. Both of them were researched by
21 the citizens, were nominated by the owners, and we applaud them for their stewardship
22 of these properties. Thank you for the opportunity to present this testimony.

23
24 Councilmember Leventhal,
25 Thank you. Lee Burstynn?

26
27 Lee Burstynn,
28 I'm Lee Burstynn, Historic Preservation Commissioner. I'm pleased to appear today to
29 present the HPC's recommendation of the designation of two outstanding Bethesda
30 area resources to Montgomery County Master Plan for Historic Preservation. One is
31 Moreland at 7810 Moorland Lane, and two, Sycamore Store, 7025 Macarthur
32 Boulevard. In the fall of 2004, the HPC received nominations prepared by private parties
33 for historic designation of these two properties which had never been identified on the
34 locational atlas and index of historic sites. Following our standard practice as outlined in
35 our executive regulations the HPC verified that the nominations were complete and
36 included sufficient information for the review. In November, 2004, the HPC held a public
37 hearing and work session to evaluate these properties. After taking testimony, reviewing
38 the nominations, the Commission voted unanimously in favor of adding both Moreland
39 and Sycamore Store to the Master Plan for Historic Preservation. The Commission
40 recommended historic designation of these properties because both resources of highly
41 representative of the history of our County as an early resort area. The HPC found that
42 Moreland meets criteria 1A, 1B, 2A of chapter 24 and A of the County code relating to
43 the historical and cultural [INAUDIBLE] in architecture and design. Moreland was the
44 Summer estate of Samuel Wheatley, a former District of Columbia Commissioner and
45 successful lumber merchant. Built in 1894, the residence has architectural significance
46 as a prime example of Colonial Revival and Queen Anne styles. Further, Moreland was

1 recently listed on the National Register of Historic Places. The Commission also
2 supported historic designation of the Sycamore Store because it has historical
3 significant for representing the street car era in the County in the early 20th Century
4 resort community along the Potomac River. The resource meets criteria 1A and 1B for
5 representing the street car era and summer resort community, and 2E for being an
6 established and familiar feature in Glen Echo.

7 Councilmember Leventhal,

8 Okay, we have your written testimony, Mr. Burstynn, we appreciate it very much. Are
9 Wayne [Goldstein] or Dean [Brenneman] here to testify? It appears not. Okay, thank
10 you both very much. We appreciate your testimony. Oh, it's a question, I'm sorry,
11 Councilman Denis.

12
13 Councilmember Denis,

14 It's really just a comment. I just want to thank the witnesses for their testimony and for
15 the levels of approval, particularly the Sycamore Store has received. And the Council
16 will recall that we passed a Zoning Text Amendment that I sponsored back in May that
17 brought this to people's attention and allowed low impact commercial use of historic
18 properties in the R90 zone that were formerly used for nonresidential purposes. So I
19 think that -- I'm delighted that we've reached this level, and I look forward to adoption by
20 the Council. Thank you.

21
22 Councilmember Leventhal,

23 Thank you, Mr. Denis. Where is Moreland located? Where is Moorland Lane? I don't
24 know where that is.

25
26 Lee Burstynn,

27 It's in Edgemoor, a subdivision of Bethesda.

28
29 Councilmember Leventhal,

30 Very good. Very familiar with the Sycamore Store. It's beautiful, beautiful little place. I
31 remember it well from my own childhood. I've told the story before about buying
32 Bazooka bubble gum at the Sycamore Store, chewing bubble gum and walking along
33 the C&O Canal, it's one of my happy, happy childhood memories.

34
35 Jody Kline,

36 Mr. Leventhal, my name is Jody Kline, I'm sorry to interrupt but my client, Mr.
37 Brenneman, is not here. Would you allow me to speak on his behalf since he has not
38 arrived yet?

39
40 Councilmember Leventhal,

41 Okay, go ahead.

42
43 Jody Kline,

44 Very quickly as for the reason stated by the Historic Preservation Commission, the
45 preservation of this site would facilitate a reuse of a landmark along Macarthur
46 Boulevard in a form that will allow it to keep that same recognition, the Sycamore Store,

1 preservation of the sign, preservation of the structure, and for all those reminiscences
2 like you have of people who drive by it and it will still make it a viable use in the future.
3 Thank you.

4
5 Councilmember Leventhal,
6 Great, thank you Mr. Kline. Okay, no other comments. That will conclude Agenda item
7 8. Good afternoon. This is a public hearing on Zoning Text Amendment 05-12 which
8 would amend the zoning ordinance to create a special development procedure in the C2
9 zone to encourage transit related development at sites within walking distance of the
10 Metro Station and generally amend provisions related to a C2 zone special
11 development procedure. Persons who wish to submit additional material for the
12 Council's consideration should do so before the close of business on November 4th,
13 2005. The Planning, Housing, and Economic Development Committee work session will
14 be scheduled at a later date. Before beginning your presentation, please state your
15 name and address clearly for the record and spell any unusual names. Is someone here
16 to represent Chairman Berlage?

17 Greg Russ,
18 Just for the record, Greg Russ from the Planning Board. Just to state that the Planning
19 Board just took this up this morning and wanted the record to remain open to the work
20 session so that they could provide you their formal opinion of this.

21
22 Councilmember Leventhal,
23 All right.

24
25 Greg Russ,
26 We'll leave it at that until we can actually get that to you.

27
28 Councilmember Leventhal,
29 Okay, thank you very much. As as a matter of fact, I was going to ask in the written
30 material I have here it shows exhibits including a Planning Board recommendation and
31 technical staff report. I've not -- I'm the sponsor of this ZTA, I've not seen the staff
32 report.

33
34 Ralph Wilson,
35 We have not as yet received it from the Planning Board.

36
37 Councilmember Leventhal,
38 I see. Okay.

39
40 Councilmember Denis,
41 Maybe Greg can bring us up-to-date on that.

42
43 Councilmember Leventhal,
44 Okay, I'd like to see that as soon as possible. Okay, I'm sorry, let's proceed with other
45 witnesses. Ms. Natalie Goldberg, please.

1 Natalie Goldberg,

2 I'm Natalie Goldberg, 11111 Jolly Way, Kensington, Maryland. Good afternoon. While I
3 support the concept of providing additional housing near metro stations, I'm here to
4 voice several concerns regarding this Zoning Text Amendment. I understand the
5 legislation is designed for a specific location and I've spoken with the developer -- the
6 attorney for that developer. This is the wrong way to change land use. This ZTA avoids
7 the Master Plan process while creating essentially a TSR or TSM zone. The Master
8 Plan specifically calls for commercial, yet there is no requirement to build any
9 commercial according to this ZTA. Secondly, this amendment has broader implications
10 than one development. As written, it could apply to a large development such as
11 Midpike Plaza or White Flint Mall. Minimally it should only apply to a metro station policy
12 area. This amendment defines workforce housing, a concept for which there is a
13 specific bill and accompanying Zoning Text Amendment pending. I believe it's wrong to
14 define workforce housing for this specific instance. Any implementation of workforce
15 housing should be consistent with the new amendment, if and when it is adopted. This
16 ZTA has no limitations on the increase in density or height, simply allowing a
17 proportional increase. There are no open space or setback requirements. Lastly, I'm
18 concerned about the traffic impact of the additional density. I believe that the procedure
19 for analyzing the resulting traffic needs to be revised. The increase in residential
20 density, which is contrary to the Master Plan, will only create more midday and weekend
21 trips. If you're adding residential use to an extremely congested area, you need to add
22 additional impact analysis procedures. I would question the accuracy of the LATR
23 assumptions for metro usage when applied to a targeted population needing workforce
24 housing, teachers, firefighters, and policemen. And the use of alternative review
25 procedure which measures trips totally differently from the normal traffic impact analysis
26 should be disallowed. I have specific concerns about wording in this amendment under
27 59C4.358.4, Regulations B, Development Standards, and I have detailed those but
28 won't read them to save time. In summary, I believe that this ZTA should be
29 implemented by a Master Plan Amendment, that it that should be delayed until it can
30 reference the workforce housing definition, and that it should be accompanied by
31 changes in LATR guidelines to look at the impact of residential travel. Thank you for
32 considering my opinions.

33
34 Councilmember Leventhal,

35 Thank you very much. Very helpful testimony. Ms. Cheng.

36
37 Yumm Yu Cheng,

38 For the record, my name is Yumm Yu Cheng with Linowes and] Blocker. On behalf of
39 Federal Realty Investment Trust, we would like to address issues that affect [Midpike]
40 Plaza in the context of this ZTA. Midpike Plaza is located at the Northwest quadrant of
41 Rockville Pike and Old Georgetown Road. It is zoned C2 and consists of approximately
42 20 acres of land located within a quarter to half a mile of a metro station. It is currently
43 being reviewed for consideration for inclusion in the White Flint Policy Metro Policy Area
44 as part of the AGP Review. The property is developed with an older strip shopping
45 center with extensive surface parking... [crashing] ...now is a critical time in the life cycle
46 of the center because over the next few years, Federal Reality will gain control over the

1 leases and therefore has the opportunity to redevelop and reposition the center. Federal
2 Realty would like to redevelop the center as a high quality transit oriented mixed use
3 development. The Center is mature and at the right time in its economic life for such
4 redevelopment to occur. It is in close proximity to Metro and is highly visible with
5 accessibility. It will be redeveloped in some fashion and Federal Realty would like to do
6 it in the smartest way possible consistent with the goals of the North Bethesda Master
7 Plan. To, 1: focus future development on land nearest to Metro stops; 2, to encourage a
8 mixture of land uses and redeveloping areas to promote variety and vitality; and 3, to
9 increase housing stock including affordable housing. The challenge now is to develop
10 the land use and zoning mechanism that allows these goals to be achieved within the
11 window of opportunity available. To achieve those Master Plan goals, the current C2
12 zoning must be modified. With certain modifications, the ZTA before you could serve as
13 the appropriate vehicle to allow for transit oriented mixed use options in the C2 zone.
14 We believe the current ZTA without modification is appropriate for smaller sites and
15 since it is limited to projects that are principally residential it could be called the
16 residential option and the standards proposed remain unchanged. However for sites 15
17 acres or greater, which is the case for Midpike Plaza, we suggest adding a mixed use
18 option which would require at least 30% of the development to be residential and that
19 the site be located in a Metro policy area. We also suggest that the development
20 standards for the mixed use options allow for more flexibility in FAR and building height.
21 We suggest a 2.6 FAR and a 200 feet building height. The tradeoff for this additional
22 flexibility would be an increase in the recommended public use space, 15% of the net
23 mall area versus 10% that's currently proposed. These standards would be consistent
24 with those found at TSM zones. All the other eligibility requirements, including the
25 MPDU and and the 10% workforce housing requirements currently in the ZTA would
26 apply to this proposed mixed use option. Attached to the letter that we have provided to
27 you is a draft of the Text Amendment with a suggested modification shown in double
28 underlining. Thank you for your consideration of our comments.

29
30
31 Councilmember Leventhal,

32 Thank you, Ms. Chiang. Mr. Kominers? [beeping] Oops, sorry, Mr. Kominers. We've got
33 the diagrams.

34
35 William Kominers,

36 A picture's worth a thousand words anyway, isn't it? Good afternoon, William Kominers
37 with Holland and Knight, representing Naples Commercial, the owner of the Noland
38 Plumbing property at the intersection of Huff Court and Nicholson Lane and the
39 extension of Chapman Avenue within the North Bethesda and White Flint Sector Plan
40 areas and within walking distance to the White Flint Metro station. Currently the property
41 is under-utilized with the offices and retail plumbing outlet for Noland Plumbing. A plan
42 for redevelopment of the existing building, a smaller multi-tenant retail has been
43 approved for future implementation, but the Master Plan recommends transit oriented
44 development under the TSM for the immediate area, including the other three corners of
45 this intersection. The exclusion of this site we cannot explain. Also the proposed right-
46 of-way for Chapman Avenue or Citadel Avenue runs through the property, taking

1 approximately 20,000 square feet of the 70,000 square feet of the site and much of the
2 parking. The effect of this road acquisition on the approved development is devastating.
3 You would have to take down one third of the building in order to achieve the code
4 parking to use the remaining two-thirds. We felt there was a better solution, and we've
5 been working with the Department of Public Works and Transportation to try and
6 arrange that by doing a retail on the first level, residential above as you see in the
7 illustration to my right. The Text Amendment would facilitate that and would allow the
8 owner to then make the right-of-way available to the County at no cost. The
9 development standards are consistent with those governing the transit station areas as
10 limited by the White Flint Sector Plan, that is TSM can allow three. We suggested two,
11 which is what the Sector Plan limitation is, with increases for MPDUs and workforce
12 housing, although we couldn't use that name because that Text Amendment hadn't
13 been introduced yet, but it's intended to utilize that as you adopt that. Existing buildings
14 in the area are already relatively tall and there's not a lot of single family residential in
15 the immediate vicinity. This would allow projects of about 125 to 135 units, including the
16 MPDUS and workforce housing. And again would allow the Department of
17 Transportation and Public Works and Transportation to get the right-of-way at no cost
18 other than -- rather than having to pay for the loss of the retail that would be there. We
19 felt this was a win/win situation for everyone providing the road right-of-way at
20 substantial savings, housing within walking distance to Metro and other retail services,
21 facilitating compatible design through the site plan review process, correcting what we
22 feel is an anomaly in the Sector Plan and providing an incentive to the owner to actually
23 use the process. But time is fleeting because the lease -- Noland Plumbing owned the
24 property, sold it to my client and leased it back. The lease is up, and they are on an
25 extension, and the owner does not want to let the property lie fallow while waiting for an
26 extended process, and that's why we have looked at the C2 zone as a way of doing that
27 so it can happen now as opposed to later. Thank you.

28
29 Councilmember Leventhal,
30 Thank you, Mr. Kominers, Mr. Humphrey?

31
32 Jim Humphrey,
33 My name is Jim Humphrey, I'm testifying as a representative of the Montgomery County
34 Civic Federation where I serve as Chairman of the Planning and Land Use Committee.
35 The Federation has taken a strong position in opposition to the passage by this County
36 Council of what is commonly referred to as "Special Interest Legislation," which
37 Maryland law prohibits. On October 10, as we left a meeting in this building, I asked
38 John Carter, head of Community Based Planning at Park and Planning, what
39 development project ZTA 05-12 was intended to facilitate? He replied that the ZTA was
40 targeted for a Federal Realty Investment Trust project planned for a plumbing supply
41 company property near White Flint. We are aware of at least two other properties with
42 C2 zoning where this ZTA, if approved, might be applied, one on Rockville Pike and one
43 in Bethesda, should public parking lot 31 be rezoned TSM as recommended in the
44 Sector Plan. Even though the ZTA might have broader applicability than the property in
45 the White Flint Policy Area, the courts have ruled that it is not just the effect of a law but
46 also it's intent that must be considered. In approving this ZTA to allow mixed use on

1 certain CTUs properties, the Council would be recommending new building standards
2 that would greatly increase the land value and profitability of its development, given the
3 current hot residential development market. Passage of ZTA 05-12 with its limitations of
4 applicability regarding specific location and minimum required lot size would offer an
5 economic advantage to the owner and developer of this plumbing property -- plumbing
6 supply property not enjoyed by owners and developers of all other C2 zoned properties,
7 and as such, it is unfairly discriminatory. Another consideration when judging if approval
8 of the ZTA would be unlawful enactment is whether the public interest purpose claimed
9 by the legislation could be met in existing law. In other words, if it is decided that mixed
10 use is the best possible use of this property in the White Flint area, but a process exists
11 in current law whereby that use could be allowed, then this ZTA could be considered
12 unlawful. We believe multiple possibilities exist for such allowance although they may
13 be more costly or time-consuming than the developer would like. These include the
14 floating zone approach to approval for this project agreed to unanimously by the
15 Planning Board this morning. In recommending approval of the ZTA, which we know is
16 intended to allow approval of a specific project, this Council would be employing a
17 process that provides an opportunity for mischief. Although no such claim is being made
18 in this case, the state prohibition on special laws was intended to prevent even the
19 appearance of conflict of interest. That is to say that an individual or entity might secure
20 beneficial legislative treatment in exchange for financial or other favors provided to
21 members of the legislature. Again, no such claim is being made in this case. The
22 appearance of special consideration can serve to undermine public confidence in the
23 legislative function, however, and must be avoided. For all of the above stated reasons
24 the MCCF urges the County Council to disapprove Zoning Text Amendment 05-12. I
25 Thank you.

26
27 Councilmember Leventhal,
28 Thank you to all the witnesses. Ms. Praisner has a question.

29
30 Councilmember Praisner,
31 We, for the Committee, will have information on C2 zones throughout the
32 County...

33
34 Greg Russ,
35 Yes.

36
37 Councilmember Praisner,
38 ...where this would apply.

39
40 Greg Russ,
41 Yes.

42
43
44
45 Councilmember Praisner,

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1 And do other Zoning Text Amendments refer to "Walking distance" within the language
2 of them? I mean, I can walk faster than someone else? What is general terminology?

3
4 Greg Russ,
5 Generally there's a distance. A number placed on that.

6
7 Councilmember Praisner,
8 So, so many feet from, and also can you tell us when we get to the Committee meeting
9 how we measure that distance?

10
11 Greg Russ,
12 Yes.

13
14 Councilmember Praisner,
15 Thank you.

16
17 Councilmember Leventhal,
18 Ms. Floreen?

19
20 Councilmember Floreen,
21 Thank you. I had asked previously for the list of the other C2 zones when we take this
22 up at Committee. I wanted to know -- I'd like to know how it links with what your
23 Boulevard Concept, is it -- are the commercial review process that's going on with
24 respect to the older shopping areas, at least I'd like to know where it stands in the
25 review process and if we could be prepared to talk about that. And could you just, since
26 you're here, tell us what the Board decided this morning? Keeping in mind that we won't
27 hold you to the extra words but a general sense.

28
29 Greg Russ,
30 Generally the Board took an approach that they believed a floating zone concept would
31 work better than using the Euclidean approach to this.

32
33 Councilmember Floreen,
34 Okay, and was that the staff recommendation?

35
36 Greg Russ,
37 Yes.

38
39 Councilmember Floreen,
40 Okay. Okay, well, we'll see that later, then. Thank you.

41
42 Councilmember Leventhal,
43 Would legislation be required to put a floating zone in place?

44
45 Greg Russ,

1 Yes. It would require either modifying existing -- an existing floating zone or creation of
2 a new. But consistent with the concepts that we have in place now that we are
3 anticipating putting in place, related to the other C2 zones throughout the County.

4
5 Councilmember Leventhal,

6 So, Mr. Humphrey, when you suggest that a process exists in current law where this
7 and other similarly situated Metro Station neighbors could be addressed and you say
8 that multiple possibilities exist in current law, including a floating zone approach
9 according to Mr. Russ, you couldn't do the floating zone approach under current law?

10
11 Jim Humphrey,

12 The tools exist in current law. They may need to be modified. But, for instance, the
13 White Flint Transit Center Zone -- Metro Station Zone could be designated as a central
14 business district which would allow CBD zoning to be recommended for this property.
15 This floating concept could be employed if modifications are made for the developer of
16 this project to that floating zone. So the tools -- what we're saying is the tools exist in the
17 Planning Board's toolbox for approval of this project without taking what is clearly a
18 Euclidean zone, which is designed as a commercial zone category, and further
19 muddying it up with mixed use which was not intended for that zone category.

20
21 Councilmember Leventhal,

22 Mr. Russ, what is the timeframe in which the Planning Board and Council are expected
23 to take up the White Flint Sector Plans? When will that occur?

24
25 Greg Russ,

26 I am not the authority on that. I can't -- the White Flint Sector, I have no clue, honestly.

27
28 Councilmember Leventhal,

29 Well, is this -- what Master Plan is this? North Bethesda or White Flint?

30
31 Multiple Speakers

32 North Bethesda.

33
34 Councilmember Leventhal,

35 It says White Flint Sector Plan, I'm sorry, in...

36
37 Greg Russ,

38 North Bethesda Mater Plan.

39
40 Councilmember Leventhal,

41 In Mr. Kominer's testimony he refers to...

42
43 William Kominers,

44 The White Flint Sector Plan is part of the -- the White Flint Sector Plan preceded the
45 North Bethesda plan. The North Bethesda plan covers a larger area than just the White
46 Flint Sector Plan.

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1
2 Councilmember Leventhal,
3 Okay, and when is the North Bethesda Master Plan going to be reevaluated by the
4 Planning Board and the Council? Would it be fair to say the distant future?
5

6 Greg Russ,
7 Yes, it would be fair to say that, yes.
8

9 William Kominers,
10 Mr. Leventhal, if I might, two corrections I think are necessary here. First the CBD zone
11 that was referred to a moment ago is a Euclidean zone, it is not a floating zone. It would
12 require a Sectional Map Amendment if the Council were to utilize it here. Second, Mr.
13 Humphreys referred to the benefits being gained by Federal Reality. He mentioned that
14 at the Planning Board this morning also. At that time we corrected, as we'll correct now,
15 the Noland property is not owned by Federal Reality. Federal Reality has no interest
16 whatsoever in the property that my client owns at Nicholson and Huff Court. Thank you.
17

18 Councilmember Leventhal,
19 Okay, thanks to all the witnesses for their testimony.
20

21 Unidentified,
22 [INAUDIBLE]
23

24 Councilmember Leventhal,
25 Oh, You know what? Your light doesn't come on here.
26

27 Councilmember Subin,
28 It does there.
29

30 Councilmember Leventhal,
31 I know, I need to get this fixed. I guess it'll only matter for a few more weeks. Mr. Subin?
32

33 Councilmember Subin,
34 Now I know you're after me. My sense is that the Planning Board is correct in looking
35 at...
36

37 Unidentified,
38 [sneezing]
39

40 Councilmember Leventhal,
41 Bless you.
42

43 Councilmember Subin,
44 Bless you! ...at a floating zone here. And I understand, Mr. Humphrey, that there are
45 strictures against spot zoning, and we have tried not to do that. My question though, is,

1 if there are no suggestions or intimations that favor the legislative body are at play here,
2 why even bring it up?

3
4 Jim Humphrey,

5 Because this project, as I stated, was clearly identified or this Zoning Text Amendment
6 was clearly identified to us by a member of the planning staff as having been introduced
7 to facilitate the approval of a specific project. That, in our definition, rang all kinds of
8 bells for the Civic Federation Executive Committee and members. That is not spot
9 zoning. And if you recall in my testimony -- and you've got the written testimony in front
10 of you which I've read verbatim -- I never mentioned the term spot zoning. I'm not
11 referring to spot zoning. I'm referring to special laws for special cases. And there are a
12 number of precedent setting cases before a Circuit Court and particular Court of Special
13 Appeals in the State of Maryland which define what special legislative treatment is. And
14 this would be a case in which the Civic Federation considers this Zoning Text
15 amendment a case of special legislative treatment for either a particular property or
16 particular entity, and also a case which is currently covered by existing law.

17
18 Councilmember Subin,

19 You've done a wonderful job avoiding my question. If there's no insinuation or no
20 intimation that the sponsor or sponsors of this were dealing with any special favors, why
21 even bring it up? It may be special legislation under the definition that it would apply to
22 this, but people can certainly be in favor of something without having received any
23 special favors.

24 Jim Humphrey,

25 I understand your comment now. As I understand it, your question to me, my response
26 is that I'm trying to explain -- and I guess I should have put it in more historical context --
27 the basis for the State's prohibition on special laws for special cases. And it actually was
28 inserted in the constitution, I believe it was the late 18th century, when, at that time
29 there was a practice in place of tavern owners hosting gatherings, if you will, at which
30 drinks were liberally applied to the patrons and they were urged to vote for certain
31 members to the State Legislature in elections and then, when certain officials were
32 elected, those officials granted favorable tax treatment to -- often times to those same
33 tavern owners that helped them in their election bids. That is the basis for the State
34 Constitutional prohibition on special laws for special cases. And so I make reference to
35 that. That is the appearance of conflict of interest that that law is trying to prohibit. In
36 fact, in order to retain public confidence in the legislative function -- for instance, in
37 Montgomery County, we have no requirement for recusal if, for instance, one of the
38 Councilmembers has receive a contribution for a developer whose project stands to
39 benefit from passage of a Zoning Text Amendment. So I would ask that the Council --
40 and the Civic Federation would ask that the Council be very cautious in approaching the
41 issue of what could be considered special interest legislation designed specifically to
42 benefit as this case, this project's approval.

43
44 Councilmember Subin,

45 Well, I regret having missed any of those late 1800 parties at the taverns. It sounds like
46 there was a good time had by all. But I do object to the insinuation that the sponsor or

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1 sponsors of this were reacting to some special favor or some special interest. It could
2 just be -- I wonder, have you ever thought it could just be that they liked the project?

3
4 Jim Humphrey,
5 Indeed, indeed...

6
7 Councilmember Subin,
8 Well, then...

9
10 Jim Humphrey,
11 ...and I made it very clear twice to say that there was no claim being made.

12
13 Councilmember Subin,
14 But you brought it up. And you didn't need to bring it up. It was unnecessary. It was
15 simply enough to say that this is special legislation that is prohibited by the legislature.
16 That's all.

17
18 Jim Humphrey,
19 It may...

20
21 Councilmember Subin,
22 That's all that was necessary.

23
24 Jim Humphrey,
25 It may have been for the members of this body, but there are members of the public
26 listening in that would benefit from --

27
28 Councilmember Subin,
29 This body is the one who is considering this.

30
31
32 Jim Humphrey,
33 Yes, sir, there are members of the public listening in who will benefit from an
34 explanation.

35
36 Councilmember Subin,
37 There are members of the public whose interest was just awakened by you even
38 bringing that up. And it is a tune that frankly is fairly nauseating.

39
40 Councilmember Leventhal,
41 Okay, there are no further questions, this concludes the public hearing. Thank you all
42 very much.

43
44 Jim Humphrey,
45 Thank you.

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1 Councilmember Leventhal,
2 We will take up now a report on the economic impact of the Montgomery County
3 Smoke-free Restaurant Law.

4
5 Multiple Speakers,
6 [INAUDIBLE]

7
8 Councilmember Leventhal,
9 Good, okay, excellent.

10
11 Councilmember Praisner,
12 While we're waiting, can I be informed as to who paid for the study and how much it
13 cost?

14
15 Unidentified,
16 [INAUDIBLE]

17
18 Councilmember Praisner,
19 I'm not sure it does. I got a version this morning that I'm not sure is the final version, so
20 I'm not sure. Does it?

21
22 Unidentified ,
23 Page 7.

24
25 Multiple Speakers,
26 [INAUDIBLE]

27
28 Councilmember Praisner,
29 Oh, okay. It does say, thank you, but the dollar amount isn't here. Dollar amount of the
30 grant. Could I get an answer to the cost question?

31
32 Dr. William Evans,
33 Could I introduce myself first?

34
35 Councilmember Praisner,
36 Sure.

37
38 Dr. William Evans,
39 Okay, my name is William Evans.

40
41 Councilmember Leventhal,
42 How are we doing?

43
44 Joan Planell,
45 Okay. We have Dr. Hyland that is patched in from Buffalo...

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1 Councilmember Leventhal,
2 Dr. Hyland, can you hear us? We can't hear you very well.

3
4 Councilmember Praisner,
5 No, it's not working. Can we try the microphone closer.

6
7 Joan Planell,
8 Okay. Try again.

9
10 Councilmember Leventhal,
11 Can you hear us, Dr. Highland?

12
13 Dr. Andrew Hyland,
14 I can hear you, thanks for finding me...

15
16 Councilmember Leventhal,
17 There we go, great, we're getting it now. Okay. Okay, Dr. Hyland, you're on -- your voice
18 is being transmitted to a televised session of the Montgomery County Council. You look
19 fabulous. So who's going to introduce this? Joan, are you going to or Mr. Evans or Dr.
20 Highland? Okay, go ahead.

21
22 Dr. William Evans,
23 This is a study that was done by myself and Andrew Hyland that was commissioned by
24 Smoke Free Maryland. And we're -- I didn't realize it was going to be so far away. I'll just
25 point to it when you can advance it. So there's been a number of communities across
26 the country that have banned smoking in restaurants and a persistent concern about
27 any of these bans has been that bans can hurt the hospitality industry. Most of the
28 evidence suggests otherwise. Can you space that.

29
30 Joan Planell,
31 Okay.

32
33 Dr. William Evans,
34 Hit it again, every time I point hit it again. There's been some evidence that examined
35 the impact in restaurants, but given the sparsity of cross stream cities that have been
36 analyzed, it's not clear how well this predicts for your potential -- for your particular
37 industry in Montgomery County. And so, in this paper, what we do is take a look at the
38 impact of the County Smoke Free Ordinance on restaurant sales and employment.
39 What we do is measure the outcome in Montgomery County before and after the
40 ordinance goes into effect. What we do is compare these changes to numbers over the
41 same time period for other counties. Okay, Joan, can you hit it again, okay? So the two
42 key options that we use here are taxable sales and employment. Both of these variables
43 are available for administration records, one coming from the State, another coming
44 from the Bureau of Labor Statistics. They're administrative data, so they're high quality.
45 And they provide values that vary by county, industry, and month. And so we can get
46 pretty detailed information about how much taxable sales were sold in restaurants in

1 Montgomery County in any particular month, and we also had variations by type of
2 restaurant. Well, there are three groups of restaurants that we focused on in the report.
3 The first are called full-service restaurants and bars. These are similarly defined in the
4 two data sets. The next are limited-service restaurants and luncheonettes. A lot of them
5 are fast-food restaurants. The reason why we break these apart is because a number of
6 fast food restaurant chains have already banned smoking in their restaurants. And so it
7 is thought that these laws will typically are going to have less impact on these types of
8 establishments. And finally, aggregate these two groups to consider all restaurants. The
9 statistical model that we use is one that we compared changes over time between
10 Montgomery County and -- I'm sorry -- and a control group. And the reason -- it is
11 tempting to just take a look at what happened in our outcome sales and employment in
12 Montgomery County before and after the law. The problem is, if you find any difference,
13 it's very difficult to attribute any change only to the law. So the standard solution in many
14 -- in much of research is to find comparison counties that look like the County in terms
15 of outcomes but were not impacted by the ordinance. What these comparison counties
16 do is identify how the sales and employment were trending after the ordinance goes into
17 effect so you have some understanding of what life would have been like had the law
18 not gone into effect. So we end up using two different comparison groups depending
19 upon the date that we we have. The first is other Maryland counties in metropolitan
20 areas, and there are five: Baltimore County, Baltimore City, Howard County, Frederick,
21 and Prince George's and the second one being Fairfax County, Virginia. Let me just go
22 through a little exercise here about why it is important to take a look at these
23 comparisons and use these counterfactuals to try to estimate what's going on. Let's
24 walk through a little example here about the average employments in full-service
25 restaurants and bars before and after the law goes into effect. If we take a look at
26 Montgomery County and take a look at the 12 months before the law went into effect.
27 There were on average about 11,800 workers in those firms -- in all those
28 establishments. If you take a look at what happened after the law went into effect,
29 employment actually increased, and that percentage change was about 8%. And so,
30 just taking a look at this, it would suggest that if you're only looking at before and after
31 that maybe the law actually increased the number of people working. But if you take a
32 look at a comparison County, Fairfax, over the same time period, you see that there
33 was an increase in the total number of people that were employed of around 6 3/4
34 percent. As a result, the actual change in Montgomery County relative to Fairfax was
35 relatively modest. There appears to be very little impact of the restaurant ban on
36 employment. Certainly there was no negative impact. The impact on the law is pretty
37 easy to establish by just taking a look at a couple of these graphs. This is a graph that
38 we took a look at of monthly tax revenues in Montgomery County, and the control
39 counties in Maryland. The graph, the solid line is the sales figures for Montgomery
40 County and the line with dots are the control counties from other Maryland areas. The
41 vertical line in the middle of the graph is October of 2003 when the law went into effect.
42 If you take a look to the left of that line, you see that these counties map each other
43 quite well. That when sales go down in other counties, they seem to be going down in
44 Montgomery County pretty well so they appear to be mimicking what happens. If you
45 take a look at what happens after the law goes into effect, these are trending similarly
46 as well. There doesn't appear to be any impact of this ordinance on taxable sales on all

1 restaurants in the County. If we take a look at this same graph, when we take a look at
2 monthly employment for Montgomery County and the Maryland controls, again we see
3 that the counties for our comparison sample are matching what's going on in
4 Montgomery County quite well before the law goes into effect and there appears to be
5 very little change in that trend once the law goes into effect. Finally we redid this
6 analysis for Fairfax County. In Montgomery, you see a small break in those trends
7 afterwards in the late 2004, but that number ends up being an incredibly small number.
8 So after we took a look at the graphical analysis, we took a look at a statistical model
9 where we try to control for a number of factors, and the basic results of the statistical
10 model are as follows. If you take a look at the impact of the ordinance on tax revenues
11 in Montgomery County, tax revenues increased by about 1.44% after the law went into
12 effect relative to the controls in full-service restaurants. If you take a look at limited-
13 service restaurants, there was a small decline. If you add the two together there was
14 essentially no change in taxable sales after the law goes into effect. If you take a look at
15 what's happening to employment in the restaurant industry, full service -- the restaurant
16 -- employment in full service restaurant actually goes up by 7%. Limited service
17 restaurants surprisingly goes down 8%. If you aggregate all these in total, there's
18 virtually no change whatsoever. And so, in conclusion, our results suggest that there's
19 no evidence that the smoke-free ordinance adversely impacted the restaurant industry
20 in Montgomery County. There's no evidence that taxable sales in bars and restaurants
21 fell in the County after the law went into effect. There's actually some evidence that
22 employment may have increased slightly in full service bars and restaurants at the
23 expense of fast-food establishments.

24
25 Councilmember Leventhal,
26 All right. Very, very interesting data. Mr. Andrews?

27
28 Councilmember Andrews,
29 Thank you. Thank you, Professor Evans, for coming in and making a presentation in
30 person and Dr. Hyland as well. We don't want to forget that you're there also. I think it's
31 just important to say that the reason that the Council has been -- at least I've been very
32 interested in this and the whole Council has been interested in what the economic
33 impact was is because when the measure was proposed, some opponents made very
34 broad claims that it would have a negative effect on the hospitality industry, and that has
35 been the pattern of claims that have been made around the country. Of course the law
36 was not introduced. The Bill was not introduced to help or to hurt restaurants. It was
37 introduced to provide essential protection from hazardous secondhand smoke and
38 ensure that the air is safe in all of our restaurants, and that has been the biggest
39 change. This is the change in Montgomery County is that the air is now safe in our
40 restaurants and people continue to go out and eat and drink and the restaurants
41 continue to do well. That is not unique to us, the pattern. That kind of result has been
42 seen in the other jurisdictions that have enacted smoke-free restaurant laws such as
43 New York City, Florida, California, and many other places as well. Since Montgomery
44 County enacted the measure and passed it in July of 2003 and it took effect in October
45 a number of other communities have moved forward, Rockville, and Gaithersburg, and
46 Takoma Park here in Montgomery County passed measures to protect restaurant

1 patrons and workers within their boundaries, and there are currently measures pending
2 in Howard County. I believe Howard County is about to consider a measure. And there
3 is one pending in Prince George's County and in the District of Columbia. And there will
4 be a measure, I understand, introduced in the General Assembly next year that will be a
5 subject of great effort to bring Maryland into this fold as well. So I think it's very useful to
6 have facts and scientific data about what the impact is, because unfortunately the
7 Restaurant Association has continued to make claims that the District of Columbia a
8 shouldn't do this and Prince George's shouldn't do this on the argument that it would
9 harm their restaurant industry. It's just not borne out by what has happened here and in
10 other places. And so the Council heard those same -- we heard the same arguments
11 here, and we listened. We looked at the data that already existed in other places. And
12 the Council made the judgment that the public health had to come first and that there
13 was no reason to believe that it would have a negative impact on our restaurant
14 industry. I'm sure everyone's very glad that it turned out that way. And I think a lot of
15 restaurants are pleased as well. Many restaurants are -- long lines when we go out to
16 see them. And there are lots of new restaurants also in the County. In fact including
17 dozens of nonfast-food restaurants have opened since the law went into effect which
18 indicates a lot of optimism in the restaurant industry about the climate. But when this
19 measure was first introduced back in the '90s, we heard claims that Silver Spring would
20 become a ghost town. It really hyped up stuff. And so it's very useful to have a report
21 that's based on scientific data. It's not anecdotal. That is -- includes all the revenue
22 that's coming through the County and the restaurant industry, and that's reported to the
23 State. And it helps advance the public debate when the facts get out. And so I want to
24 thank you for coming here today to present your report, because it helps bring it to life
25 rather than just seeing it on a piece of paper. I think that there is -- again, one can make
26 -- and no one has -- I've never heard anybody up here actually argue that because we
27 passed a smoke-free restaurant law revenues in the restaurant industry are going to go
28 up -- no one's ever said that. We're happy if they do. We're happy that restaurants are
29 doing well. But I think the only motivation I heard up here from my colleagues was to
30 protect the public health and all other workers in Maryland who work inside public
31 places are protected from hazardous secondhand smoke now. They don't have to worry
32 about unsafe air in their workplace especially when something is completely
33 preventable as secondhand smoke is. And the final point I would make is we haven't
34 had to spend any money enforcing it. Unlike other laws which require plenty of
35 enforcement such as speeding, this law has not requires any enforcement funds
36 because its broadly supported, easy to detect if it's violated, and not accepted when it is
37 violated in those rare occasions, usually because someone may not be aware of it. So it
38 is an example, I think, of where a law not only achieves its purpose of protecting public
39 health but does so at no cost to the taxpayer and those kind of laws are good to find.
40 Most laws don't have both those characteristics. So I just wanted to give you the
41 opportunity to add anything that you may not have had in your formal presentation that
42 you thought was important for us to hear as well.

43
44 Dr. William Evans,
45 No, but maybe Andrew has anything to add.
46

1 Dr. Andrew Hyland,

2 Yeah, thanks, Bill, I appreciate that. There are three points that I'd like to make to the
3 Council. And you've basically made them, but I just would like to reinforce those points.
4 I've been doing evaluation research of clean air policies for about 10 years and have
5 really advised about as much as this as just about anybody else in the country. There
6 are really three key points. One is that these smoke free policies -- they work. There's a
7 lot of debate and a lot of concern, but eventually, when they get implemented, the
8 primary thing is that they cleanup the air. That's the Main purpose. And eventually
9 people support them. People see that this is a good thing, and they appreciate the clean
10 air and the workers appreciate it. And public support -- you need public support
11 obviously to begin with, but then public support will increase. Lastly is the predicted
12 economic devastation. Silver Spring becoming a ghost town -- this has never happened
13 anywhere. And the catastrophic predictions have never come true. The second point is
14 that the results here in Montgomery County are really no different than the results in
15 many, many other evaluation studies that have been done across the world. A couple
16 years ago, we did a review of all of the economic studies of what happened when
17 restaurants go smoke-free. There was almost 100 studies that we dug up, and we rated
18 them on different scientific criteria. I'm sure you've heard a lot of anecdotes that this
19 business is going under and these people are having problems. It's good to have
20 studies based on credible scientific information. Of all the nearly 100 studies, there were
21 21 studies that met the most rigorous scientific criteria and every single one of them
22 concluded that the smoke-free laws did not adversely affect the hospitality economy. In
23 contrast there were lots of studies that did conclude that smoke-free laws were bad for
24 business, but every single one of those studies was funded by the tobacco industry or
25 an agency financed by the industry, and none of those studies met the most rigorous
26 scientific criteria. And then the third point is really health. And again that's the purpose
27 of these laws is to try to improve worker health. Anymore evidence that you need,
28 clearly there's the EPA recommendations, the California EPA has just come out and
29 claimed that secondhand smoke causes breast cancer now in younger, primarily
30 premenopausal women. Just in the last 6 months there was a study looking at
31 secondhand smoke exposure in Delaware bars and restaurants before and after the
32 law, citing in Delaware, an over 90% reduction in exposure. Just in the past couple
33 months, I have similar stories study in New York that looked respiratory symptoms of
34 bartenders and wait staff, and reporting that after the smoke-free laws in New York
35 State there fewer people, fewer bartenders reported eyes and things like stuffy noses
36 and itchy eyes and so on. And then just this past week a landmark paper describing
37 what happened in Ireland after Ireland had gone smoke free which took place in March,
38 2003. And the results are the same. And the air got cleaner and the bartenders and wait
39 staff in those facilities reports fewer adverse respiratory symptoms. The work that -- the
40 efforts to get the Montgomery County policy in place, a long difficult battle, not full
41 support across the board, but generally speaking though the majority support these
42 things. The experience that you've had in Montgomery County is not different than what
43 has happened in other parts of the U.S. and in other countries and these data, to the
44 extent that they can contribute the discussions ongoing not only in Montgomery County
45 but in other counties, and states, and countries, then there's that value that's in it.

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1 Councilmember Andrews,
2 Thank you, Dr. Hyland.

3
4 Councilmember Leventhal,
5 Thank you very much. Mr. Silverman?

6
7 Councilmember Silverman,
8 Thank you, Mr. Vice President. I appreciate the study very much. I was a supporter of
9 the legislation. But I did have a question, that I didn't see in here, and if I missed this,
10 please tell me where it is. If it isn't in here, can you tell me if it's anywhere? Which is in
11 effect what I call "same store sales." Most of the data -- I mean, if I was reading this
12 correct then most of the studies that have been presented have been comparative
13 Macro databased on tax information, and I don't recall ever seeing sort of a matchup of
14 Joe's Irish bar -- you know -- this year and then the following year after the change. I
15 was wondering if did I miss that in here or is that just not retrievable information
16 anywhere?

17
18 Dr. William Evans,
19 That data is not publicly available. The only data that is available on aggregate numbers
20 at the county level by industry. There have been -- was your stuff in New York at the
21 store level -- at the restaurant level, Andrew?

22
23 Dr. Andrew Hyland,
24 Yeah, There's really -- there's basically not any study that looks at individual level data
25 before and after because the data just aren't publicly available. And it really gets into the
26 issue -- going into this, typically the opponents of the regulations indicate that the
27 industry -- hospitality industry will suffer which is a slightly different comment than a
28 business owner and I think rightfully so going into this. Has their life savings and their
29 business and working 100 hours a week and have their families vested in it. They're
30 concerned about -- they don't want to know what's going to happen to the industry,
31 what's going to happen to them. Economic evaluation studies are from a broader
32 perspective and that's looking at industry-wide, easing out, and what small sub-classes
33 of facilities that may gain or that may lose are really beyond the scope of the available
34 data.

35
36 Councilmember Silverman,
37 I would assume that, if from an industry perspective, if you had data that showed that,
38 you know, restaurant "A" took a big hit after the imposition of this, you'd provide that
39 kind of information. That's why I was asking. Because I've never seen it, and it's always
40 been sort of argued out there either at a macro level or at a micro level. When a
41 restaurant closes down, we've heard, well, that's because of the smoking ban, but we
42 never seem to be getting provided any hard data that would suggest that that in fact is
43 the reason why a restaurateur went out of business. There are obviously a lot of
44 reasons. I assume, if the data's out there, somebody would have collected it at some
45 point. It sounds like nobody's put it together, which again suggests that the red flags that
46 were raised a couple of years ago, several years ago, have not really come to pass.

1
2 Dr. Andrew Hyland,

3 I think related to that point is, you know, our work in New York state indicates about
4 15% of restaurants will go out of business at any given year, irrespective of smoke-free
5 laws. The restaurant industry is highly competitive. I think, as jurisdiction contemplates
6 implementing smoke-free policies, I think the responsible way to go is proactive -- that
7 the government be proactive in reaching out to the hospitality industry, and say this is
8 coming, here's the rationale. We want to work with you to try to make the transition as
9 easy as possible. Many of those facilities, they need to feel a little bit more creative in
10 their marketing plans, who they cater to, change the fundamental business; many may
11 not need to change anything. So I think the authorities have a role to try to educate,
12 work with the business owners. In contrast -- rather, likewise the business owners, I
13 think that it helps facilitate, ease the transition when they can recognize that, okay, this
14 is a public health issue, and I've worked to try achieve the end goal of protecting the
15 employees and be willing to make some changes in the way they operate their
16 business.

17
18 Councilmember Leventhal,
19 Thank you. Mrs. Praisner?

20
21 Councilmember Praisner,
22 Thank you very much. I still didn't hear the answer to my question about the cost after
23 study like this.

24
25 Dr. William Evans,
26 It was a 20,000-dollar grant.

27
28 Councilmember Praisner,
29 I think this information is helpful at the state level to support some of the efforts of the
30 state which is where I think legislation like this belongs. When we passed the legislation
31 at the county level, we also said we were going to provide some marketing and financial
32 support to the businesses. I don't know that we've gotten a report on that. And it would
33 seem to me that would have been useful and would be still useful to know how that
34 money was used, if that money was used, and what was the effect of that support for
35 individual businesses.

36
37
38 Dr. William Evans,
39 My understanding is that no one ever applied for it.

40
41 Councilmember Praisner,
42 Well, I'd like to see what we made available, et cetera.

43
44 Dr. William Evans,
45 My understanding was that a notice was published and that there were funds available
46 and that nobody ever applied for them.

1
2 Councilmember Praisner,
3 My experience with small businesses is, I'm not sure where it was published and how it
4 was provided to folks, so I'd like that information. Thank you.

5
6 Councilmember Leventhal,
7 Mr. Andrews?

8
9 Councilmember Andrews,
10 Thank you. I think one thing that was a factor and I think important to note, in
11 Montgomery County's experience is the County Council have been on record since
12 1999 in support of a smoke-free law just the first year that we adopted it or passed it. It
13 was vetoed that year, and then we went through the regulation and that was ultimately
14 in the course. So by the time we passed it in 2003, there was a lot of notice out there
15 that this was the position of the County Council, and that had not changed in the
16 intervening time either. So I wanted to make that point. And I will just note that, as Dr.
17 Hyland noted, there's very high turnover in the restaurant industry, and so even if the
18 data were publicly available for individual restaurants, you'd have to be very careful in
19 trying to ascertain or conclude that a restaurant had closed because of a particular law,
20 because there are all kinds of reasons restaurants close every day, whether it's
21 competition or change of ownership or change of tastes, which is why looking at it in the
22 aggregate is the, in my view, the appropriate way to look at it and was indeed
23 responsive to the broad claims that were made by opponents that it would harm the
24 industry as a whole when we had the hearings. And so we really -- we heard it. We
25 heard what the opponents said. We looked at the broad claim. And here's the result.

26
27 Councilmember Leventhal,
28 Excellent. Well, thank you very much -- thank you very much for presenting the study. I
29 hope that we can get from the County some backup for the work that has been done
30 here by the smoke-free coalition, because I think that is excellent and useful data. I'm a
31 strong supporter of the smoking ban that we passed. I do think that what has been said
32 here about the studies performed by the tobacco industry, if one was not inclined to take
33 seriously a study funded by the tobacco industry, one might question a study funded by
34 advocates. I'd like to ask that our own Department of Finance at least vouch for this
35 data which I have every confidence is accurate, but I think that if we have Montgomery
36 County government on some of these statistics that might be more persuasive to our
37 colleagues in Prince George's County or in Annapolis, as they consider legislation which
38 I strongly hope they will pass. This is one of the most significant accomplishments of
39 this term of the County council, and it was one that was very -- was a very tough call for
40 a number of Councilmembers in that we all care about small business. We all want
41 small businesses to survive and thrive. We all want restaurants to do well. We all want
42 our constituents to dine out and enjoy themselves. It was difficult when we heard from
43 some restaurants that they were literally worried about their survival. And yet we made
44 a call, and I said at the time that I understood that a small handful of restaurants might
45 in fact suffer if people could not go there and smoke but given the choice between the
46 economic interests of a small number of restaurants and the overall public health, I

1 made a judgment with respect to my vote to vote for the public health, and I believe that
2 was the right vote, and I'm delighted that in the aggregate the climate for dining out and
3 for tax revenue and for employment in the restaurant and bar industry appears not to
4 have been harmed at all, and I'm delighted to hear that. I believe that there may have
5 been some restaurants where people used to go and hangout and smoke where their
6 revenues suffered, and I think the challenge as policymakers -- and I'm talking more to
7 our colleagues in Prince George's County and the District of Columbia because we've
8 already passed this, is whether, as a matter of good public policy, we want to encourage
9 patrons to hang out at great lengths, late at night, smoke a lot, drink a lot, and drive
10 home. And since that was the argument that was being made was that that was the
11 activity that we were potentially going to curtail with a resulting loss in tax revenue to the
12 County government, the loss in tax revenue clearly has not occurred. It was difficult for
13 me as a policy maker and as Chairman of the Health Committee to be persuaded that
14 an act that we might take that might mean less smoking, less drinking and less driving
15 home after a night of smoking and drinking was an outcome that I should be worried
16 about. For those who think that every decision is going to be easy and that no one will
17 be angry at you, people who feel that way probably ought not run for the County
18 Council. This was a really tough call, and people got really angry. One of the most vocal
19 opponents of the smoking ban represents an important restaurant chain here in the
20 County. And I will not call out the name of the chain, but I will tell you that I visited
21 several outlets of that chain recently, and they are packed. You have no trouble getting -
22 - I mean, you have to wait for a table. You can see people streaming in and streaming
23 out. Based the only on the evidence of my eyes -- I don't have solid data, and the
24 individual business sales information that Mr. Silverman was looking for is proprietary,
25 and they don't have to share it with us. So, that particular restaurant chain, from the
26 evidence of my own eyes, is doing absolutely great even though you can't smoke there
27 anymore. So congratulations to Mr. Andrews and to all Councilmembers who fought for
28 this legislation, and thank you to Mr. Andrews for suggesting that this be placed on our
29 agenda. I think it's very, very valuable data for us to have, and I hope that we can work
30 with our Department of Finance to vouch for, or perhaps disagree with, but hopefully
31 vouch for the excellent data that has been presented to us this afternoon. Mr. Andrews,
32 closing comments?

33
34 Councilmember Andrews,

35 Thank you very much. And thank you for your excellent leadership on this, George. I do
36 disagree with you in one respect that I really don't think the report needs the County
37 government's imprimatur. Those who take issue with the study will probably say, well,
38 it's the County's government endorsing its own view. The key is whether the data was
39 solid data. Was it done in a professional way? Is it verifiable? Is it repeatable? Can you
40 do this? That's the difference, as Dr. Hyland pointed out, between the studies that have
41 been done by the tobacco industries and the studies done by the scientific community in
42 terms of the result is that, if you look at scientific data and you don't cherry pick and you
43 have it done in an objective way, then the results have consistently shown no adverse
44 impact. And that really is the key difference between the studies done by folks like
45 Professor Evans and Dr. Hyland and most of the studies that have been done by the

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1 tobacco industry. They've used data -- their approach to data is very different, and that I
2 think is the key.

3
4 Dr. William Evans,

5 Well, the employment data is downloadable from the web. It's relatively easy to get.

6
7 Councilmember Leventhal,

8 Very good. We will reconvene in 5 minutes in the Sixth Floor Conference Room to
9 interview Parker Hamilton for the position of Director of Public Libraries. 2:45 in the
10 Sixth Floor Conference Room.

11